Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
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Legend

Company =

State =

A =

B =

C =

Trust 1 =

Trust 2 =

Trust 3 =

Shareholders =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

D7 =

x =

y =

Dear :

This letter responds to a letter dated November 18, 2011, submitted on behalf of Company, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that Company was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. From D2 until D3, A, B, and C, each an individual and United States citizen, owned shares of Company stock.

On D3, A transferred x shares of Company stock to Trust 1, and B transferred y shares of Company stock to Trust 2. On D3, Trust 1 and Trust 2 were qualifying shareholders of an S corporation pursuant to § 1361(c)(2)(A)(i). On D4, A died and Trust 1 remained an eligible shareholder until D5 pursuant to § 1361(c)(2)(A)(ii). Company represents that Trust 1 satisfies the requirements to be a Qualifying Subchapter S Trust ("QSST") within the meaning of § 1361(d)(3) effective D5. However, the sole beneficiary of Trust 1, B, did not make a timely QSST election under § 1361(d)(2). Therefore, Trust 1 was not a permissible shareholder on D5 and thereafter. As a result, Company's S corporation election terminated on D5.

C was a shareholder of Company until his death on D6. Pursuant to the terms of C's will, y shares of Company stock were transferred to Trust 3 on D7. Company represents that Trust 3 is eligible to be an electing small business trust ("ESBT") within the meaning of § 1361(e) effective D7. However, the trustee of Trust 3 did not make a timely ESBT election under § 1361(e)(3). Therefore Trust 3 was not a permissible shareholder on D7 and thereafter.

Company represents that Company and Shareholders (C, Trust 1, Trust 2, and Trust 3) have filed tax returns consistent with Company being an S corporation since D5. Company further represents that the circumstances resulting in the termination of

Company's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. Company and Shareholders have agreed to make any adjustments the Commissioner may require, consistent with the treatment of Company as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based on the information submitted and the representations made, we conclude that Company's S corporation election terminated on D5. We also conclude that this termination was inadvertent within the meaning of § 1362(f). In addition, to the extent Company's S corporation election would have terminated on D7, such termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), Company will be treated as continuing to be an S corporation from D5 and thereafter, provided Company's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

This ruling is contingent on Company and Shareholders treating Company as having been an S corporation from D5 and thereafter. Shareholders must include their pro rata share of the separately stated and nonseparately computed items of income, loss, deduction, or credit as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by Company as provided in § 1368. This ruling is also contingent on the beneficiary of Trust 1 filing a QSST election effective D5, and the trustee of Trust 3 filing an ESBT election effective D7, with the appropriate service center within 120 days following the date of this letter. A copy of this letter should be attached to such elections. If Company or Shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representative.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: